

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRYL J. GLOVER,

Plaintiff,

DECISION & ORDER

v.

Case No. 11-CV-1028-FPG

ADVENT TOOL & MOLD, INC.,
KENNETH (“KEN”) DESROSIERS,
JAMES (“JIM”) MURPHY,
DAVID (“DAVE”) KLAFEHN,
JOHN/JANE DOE(S), presently
unknown but who will be named later,

Defendants.

Pro se Plaintiff Darryl J. Glover (“Plaintiff”), on March 18, 2011, filed the Complaint in this civil rights action against the above-named Defendants, alleging violations of his federally-protected rights under 42 U.S.C. § 1981(a) *et seq.*, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), *et seq.*, the Fourteenth Amendment of the United States Constitution, the New York State Constitution and laws, and the New York State Executive Law, Article 15 § 296(a) Human Rights Law. ECF No. 1. As reflected in the Order issued by Magistrate Judge Marian W. Payson on July 16, 2014, Plaintiff failed to appear at a Rule 16 Scheduling Conference noticed on June 27, 2013 for July 31, 2013, and counsel for Defendants informed the Court of their receipt of information suggesting that Plaintiff was deceased. ECF No. 17. The Order, which ensued consequently, following inquiries on the part of the Court and the absence of activity in this case, directed Defendants to file and serve on or before July 28, 2014, a “statement noting the death” of Plaintiff as contemplated by Rule 25(a) of the Federal Rules of Civil Procedure. *Id.*

Later on July 16, 2014, Defendants, by their counsel, Harter, Secrest & Emery LLP, Jeffrey J. Calabrese, of Counsel, pursuant to Fed. R. Civ. P. 25(a), filed a Suggestion of Death Upon the Record (ECF No. 18), suggesting upon the record the death of Plaintiff on April 20, 2013 during the pendency of this action, and attached a Certificate of Service demonstrating that on July 16, 2014, a copy of the Suggestion of Death Upon the Record was mailed to Plaintiff at the address of record, Darryl J. Glover, 222 Hawley Street, Rochester, New York 14608, using the United States Postal Service.

Rule 25(a)(1) regarding the death of a party states as follows:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).¹ Regarding service, Rule 25(a)(3) provides that a "statement noting death" must be served in the same manner as a motion to substitute, *i.e.*, "on the parties as provided in Rule 5 and on nonparties as provided in Rule 4." Fed. R. Civ. P. 25(a)(3). Rule 5(b)(2)(C) provides that "a paper is served under this rule by: mailing it to the person's last known address—in which event service is complete upon mailing." Fed. R. Civ. P. 5(b)(2)(C).

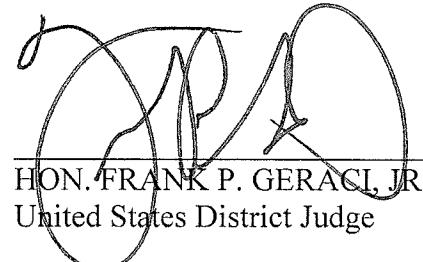
More than 90 days have elapsed since the date of completed service by mail of a copy of the Suggestion of Death Upon the Record or statement noting death upon Plaintiff at his last address of record, and the filing of this statement and Certificate of Service with the Court. No motion for substitution "has been made by any party or by a successor or representative of Plaintiff, and to date, there has been no activity in this case during the intervening 90-day time period.

¹ "The rule does not require that the statement identify the successor or legal representative; it merely requires that the statement of death be served on the involved parties." *Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 470 (2d Cir. 1998).

Accordingly, the Court hereby Orders pursuant to Fed. R. Civ. P. 25(a)(1), that Civil Case No. 11-CV-1028 be dismissed. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: October 27, 2014
Rochester, New York



HON. FRANK P. GERACI, JR
United States District Judge